THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 14310 of 2006

20-07-2006

Between:-

Mamidala Anasuya

Petitioner

And

The Deputy Commissioner of Endowments, Kakinada, East Godavari district and three others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 14310 of 2006

Oral order:

The writ petition is fundamentally misconceived, and the challenge to the impugned order of the 1st respondent dated 25-06-2006 misconceived.

The petitioner is a widow of one M. Venkateswara Rao, who is stated to have been granted lease of an extent of Ac.02-66 cents of land belonging to the Sri Bhavanarayanaswamy temple, Sarpavaram village, Kakinada rural (M), East Godavari district, the 3rd respondent, in survey Nos. 113, 114 and 115 situated at Sarpavaram village during 1995-96. After expiry of the lease period also, M. Venkateswara Rao continued in the property as an encroacher and the endowment

department failed to evict him from the lands in question.

On 25-06-2003, the 3rd respondent notified conduct of a public auction for grant of leasehold rights of the temple lands whereat the 4th respondent became the highest bidder; the lease in favour of the 4th respondent was approved by the 1st respondent in the proceedings dated 16-07-2003; and the 4th respondent also paid an amount of Rs.20,000-00 towards deposit in respect of the lease in his favour.

However, the petitioner's husband, M. Venkateswara Rao, the encroacher of the lands in question, instituted a wholly incompetent suit O.S.No. 890 of 2004 and obtained ad-interim injunction in the Court of the learned I-Additional Junior Civil Judge, Kakinada in I.A.No. 631 of 2006. As a consequence, the 4th respondent could not be put in possession and enjoyment of the lands in respect of which he obtained leasehold rights. Eventually, the suit was dismissed as it ought to have been, on 23-03-2006 and possession of the lands was taken over from M. Venkateswara Rao by the Endowments department and handedover to the 3rd respondent, on 06-06-2006.

On 08-06-2006, the Manager of the Temple submitted a report to the 1st respondent forwarding and recommending the representation of the 4th respondent to

be permitted him to be a tenant of the lands in question for a three year term 2006-07 to 2008-09 on a annual maktha of 46 bags for the first crop and 1/3rd maktha for second crop in view of the chronology of events referred to above which resulted in the 4th respondent not enjoying the fruits of the public auction held on 25-06-2003 and at the instance of the husband of the petitioner pursuing a wholly incompetent litigation and in abuse of the process of law.

The 1st respondent, by the impugned order, having considered the representation of the 4th respondent, as processed and forwarded by the 3rd respondent and finding equities in favour of the 4th respondent in the facts and circumstances of the case, in purported exercise of powers under Rule 16 (2)(iv) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 issued in G.O.Ms.No. 379, Revenue (Endowments. I) dated 11-03-2003 (for short 'the Rules'), approved extension of lease for a three year term 2006-07 to 2008-09 in favour of the 4th respondent.

Sri Challa Dhanamjaya, learned counsel for the petitioner very strenuously contends that Rule 16 (2)(iv) of the Rules does not invest in the 1st respondent any power to extend the lease in favour of the 4th respondent or to

divert the normal statutory process of granting leases by the conduct of a public auction. This is the singular issue urged for seeking the relief in the writ petition and this issue requires to be examined.

Rule 16 (2)(iv) of the Rules, on a true and fair construction, deals only with approval or disapproval of the leases. It is not in dispute that the 1st respondent is the competent authority to regulate grant of leases of agricultural lands of Sri Bhavanarayanaswamy Temple, Sarpavaram village, as it is an institution under Section 6(b)(ii) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. The Deputy Commissioner had approved the lease in favour of the 4th respondent on 16-07-2003 pursuant to the public auction held on 25-06-2003. Rule 16 of the Rules, on its terms or by any necessary or compelling implication of its phraseology does not confer any power for grant of extension of a lease or for grant of a lease otherwise than by way of public auction.

Proviso to Rule 7 (1) of the Rules however carves out an exception to the provisions of Rule 7(1) of the Rules. Rule 7(1) of the Rules enacts that all leases shall be by public auction. The proviso empowers the competent authority, on a request made in writing by the Executive Authority, to permit the lease of any property otherwise

than by public auction, if he is satisfied, for reasons to be recorded in writing, that the alternative is necessary and in the interest of the institution or endowment.

The 1st respondent, being the competent authority, is also the authority empowered to exercise the power under the proviso to Rule 7 (1) of the Rules. The fact that the 1st respondent has erroneously quoted Rule 16 (2)(iv) of the Rules as the authority for the impugned auction, while having the authority to exercise power under Rule 7 (1) Proviso of the Rules would not detract from the validity of power exercised. In fact, the entirety of the impugned order substantially confirms to the procedural rigor of the Proviso to Rule 7 (1) of the Rules viz., consideration of a request made in writing by the executive authority i.e., 3rd respondent, the recording of satisfaction and in writing and grant of extension of lease which in fact amounts to the grant of a lease otherwise than by public auction.

The exercise of power in favour of the 4th respondent, in the totality of the circumstances, is also a fair and equitable exercise of power and in the ultimate analysis in the interest of the 3rd respondent-temple. Since the grant of a lease of land belonging to the 3rd respondent-temple should be effectuated in favour of a lessee so as to create the necessary level of confidence in future lessees that the Endowment department will not

merely perform the ritual but also effectuate of the consequence of the ritual (of granting leases by public auction). Otherwise future grant of leases of the 3rd respondent-Temple lands will have no competitive bidders.

In the totality of the circumstances and for the reasons recorded hereinabove, the writ petition is without merit, beseeches rejection and is accordingly dismissed at the stage of admission after hearing the learned Government Pleader for Endowments. No costs.

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GODA RAGHURAM, J

Dated:20-07-2006
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